

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JAMES DALTON SMITH, #02097680

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:21cv661

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Aileen Goldman Durrett, who issued a Report and Recommendation (“the Report”) (Dkt. #11) concluding that the petition for writ of habeas corpus should be denied and the case should be dismissed with prejudice. Petitioner filed objections. (Dkt. #14).

In the objections, Petitioner reurges the issues raised in his 28 U.S.C. § 2254 petition. (Dkt. #14, p. 1). The Court has reviewed the tendered objections, and they generally add nothing new to Petitioner’s prior contentions in this case. Despite his arguments, Petitioner fails to show that the Report is in error or that he is entitled to relief.

Petitioner also objects to the Magistrate Judge’s consideration of the Texas Court of Criminal Appeals’ (“TCCA”) denial of his application for state habeas corpus relief, arguing that the TCCA’s denial of his application without written order should not be given any deference because “[t]he TCCA’s decision to grant or refuse review is discretionary, and has absolutely no bearing on the correctness of the lower courts’ decisions.” (Dkt. #14, p. 2). Petitioner seems to be conflating the TCCA’s refusal of a petition for discretionary review on direct appeal and the TCCA’s denial of a state habeas corpus application without written order, which is at issue in this case. As the Magistrate Judge correctly noted:

In Texas writ jurisprudence, usually a denial of relief rather than a ‘dismissal’ of the claim by the Court of Criminal Appeals disposes of the merits of a claim.”

Singleton v. Johnson, 178 F.3d 381, 384 (5th Cir. 1999); *see also Henderson v. Cockrell*, 333 F.3d 592, 598 (5th Cir. 2003); *Ex parte Torres*, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997) (holding a “denial” signifies an adjudication on the merits while a “dismissal” means the claim was declined on grounds other than the merits). Thus, a state application that is denied without written order by the TCCA is an adjudication on the merits. *See Singleton*, 178 F.3d at 384; *Ex parte Torres*, 943 S.W.2d at 472.

(Dkt. #11, p. 6). Thus, Petitioner’s assertion that the Magistrate Judge improperly considered the TCCA’s denial of his state habeas application is without merit.

Finally, Petitioner objects to the Magistrate Judge’s recommendation that a certificate of appealability be denied. (Dkt. #14, p. 2). He asserts that his “above objections demonstrate that reasonable *jurors* would find the issues presented [debatable], and that this case deserves encouragement to proceed further.” (Dkt. #14, p. 2) (emphasis added). Petitioner misstates the standard for issuance of a certificate of appealability. As the Magistrate Judge correctly stated in the Report, “where a district court rejected constitutional claims on the merits, the petitioner must demonstrate that reasonable *jurists* would find the district court’s assessment of the constitutional claims debatable or wrong.” (Dkt. #11, p. 18) (emphasis added) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Henry v. Cockrell*, 327 F.3d 429, 431 (5th Cir. 2003)). For the reasons stated in the Report, the Court agrees with the Magistrate Judge that this action does not warrant a certificate of appealability.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**.

It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

IT IS SO ORDERED.

SIGNED this 23rd day of September, 2024.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE